terns of violence observed there, will be used by the insurgents as propaganda to increase calls for violence against U.S. and Coalition personnel. I believe that if the responsive Darby Photos are released, riots, violence, and attacks by insurgents will result.

26. I am also concerned that, while the photos and videos taken together are illustrative only of isolated activity by one military unit, the members of which have been the subject of criminal investigations, prosecutions, and convictions,[1] their graphic and offensive nature makes it easy to falsely generalize from those images and characterize the abuse as more widespread than it was, and to impugn the United States Armed Forces as a whole, thereby generating a more vehement—and violent—reaction. The offensiveness of these images will make it more difficult to counteract calls for violence against U.S. and Coalition Forces despite the United States Government's immediate and forceful denunciation of the conduct portrayed in these photos, the numerous investigations into the activities and personnel they depict, and the criminal and military prosecution of those confirmed to be involved.

The Effect of the Responsive Darby Photos on the Predominantly Muslim Populations of Iraq and Afghanistan

27. Specifically, with respect to the video images described in paragraph 23, as common experience has shown and as viewing of the video clips has confirmed,

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[1] A separate addendum is attached that delineates the current status of disciplinary actions taken against those personnel who were involved in the abuse and mistreatment of detainees at Abu Grhaib [*sic*] some of which is depicted in the Darby photos.

video images are more powerful than still photographs. Video captures a continuum of action, shows cause-and-effect, and portrays the range of emotions of those depicted in a manner that a still photo—which is devoid of those dynamic qualities—fails to convey. The video images, thus, evoke a visceral and empathetic connection between the viewer and the person being victimized, and are much more likely to generate a violent reaction or be exploited by insurgents for violent ends.

28. Iraqi and foreign detainees have indicated that an important motivation for their fighting against the Coalition and U.S. forces is their perceived mistreatment of Iraqis at Abu Ghraib prison. Thus, for example, al Qaeda leader Abu Musab al-Zarqawi demanded the release of all female detainees as the sole condition for the release of American hostages Jack Hensley, Eugene Armstrong, and British hostage Kenneth Bigley, all of whom were subsequently beheaded. British hostage Margaret Hassan (who was also killed by her abductors) also pleaded in a video released by her captors for the release of female detainees.

29. Similarly, on February 28, 2005, a statement by the Media Wing of Abu-Mus'ab al Zarqawi-al-Qa'ida of Jihad Organization in the Land of the Two Rivers [Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn] was posted on various pro-Al-Qaeda Internet sites in which the group warned and reminded Muslims of the tactics of the enemies of Islam: "2. They have incarcerated our women in concentration camps, where they raped them and violated their honor . . . 3. They gave the rejectionists (Shi'a) access to our women, and the Ministry of Interior jails can testify to the fact. They gave them access to our Mosques, and their impudence reached the point

of writing on the Mosques' walls, 'Today [we take] your land, tomorrow [we will take] your honor, [rape your women].'"

Redaction of the Responsive Darby Photos Does Not Alter These Conclusions

30. Redaction of the responsive Darby Photos to obscure individuals' faces and identifying information and, where necessary, genitalia, does not change my opinion. Release of the photographs and videos, even in redacted form, will very likely lead to riots and violence across the Middle East, posing grave risk to both military forces and civilians.

31. This is because the privacy concerns of the detainees are separate and distinct from the inflammatory nature and offensiveness of the conduct depicted in the responsive Darby Photos—and thus the risk of harm to our personnel—which remains apparent despite redaction. Even with the images redacted, the abuses will be apparent. The official release of these graphic photos and videos depicting this type of behavior and abuse by U.S. military personnel will very likely incite violence and result in casualties, and redaction of the photographs and videos will not alleviate or lessen this risk.

Not Only the Responsive Darby Photos Themselves, But the Official Act of Releasing Them Could Lead to Harm to American Troops and Civilians

32. In my opinion, not only the images themselves, but also the official act of releasing the responsive Darby Photos could significantly harm U.S. interests and endanger U.S. personnel, as well as Iraqi and Af-

ghan civilians, police, and military personnel working in coordination with Coalition and NATO forces. Our democratic idea of public accountability—the airing of misdeeds by government officials and employees in order to hold government to the highest standards of conduct—is an idea that is misunderstood in other parts of the world. The insurgents likely will perceive and portray an official United States Government release of the Darby Photos as a deliberate tactic in the war and a conscious degradation to the dignity of Iraqis. While the acts of abuse were originally inflicted by rogue individuals acting illegally and contrary to U.S. policy, this official release will be perceived as the re-infliction of that degradation in full public view and under the full authority of the U.S. Government. Demagogues will be free to characterize the public disclosure of these images as further evidence of U.S. immorality and hypocrisy. Such a characterization by violent extremists will—in my opinion—put the lives of American troops and civilians in extreme danger. It also will fuel the efforts of extremists to generate or stimulate opposition to U.S. policies throughout the broader Middle East. It is likely to increase pressures on friendly governments in the region to distance themselves from the U.S. All this would be a serious setback to the U.S. Government's efforts to fight the War on Terrorism alongside mainstream Muslim allies and friends in the Middle East.

Release of Photographs That Were Previously Leaked to the Press Poses a Threat to the Safety of Troops and Civilians

33. As an initial matter, the photographs that were previously leaked were not officially released. An offi-

cial release by the United States Government lends an imprimatur—an official patina—that has never been attached to these photos.[2] As described above, many individuals in the Middle East will not understand that this official release is not an intentional effort to further ridicule and humiliate the individuals depicted, their culture, or their religion.

34. Before the *Newsweek* report of alleged Koran desecration, similar reports had been published by mainstream media publications. In particular, several media outlets previously reported that a Koran had allegedly been flushed down a toilet. Yet it was not until the *Newsweek* report cited a Government source, who appeared to confirm the reports, that the allegations touched off riots and death abroad. Similarly, official release of the responsive Darby Photos by the United States Government (even if some of the images had been leaked before to the press by unofficial sources) is bound to have a much different and more serious effect, different in kind from the prior unofficial release.

35. In addition, some of the previously released photographs have not been widely circulated. An official release of these photos significantly increases the chances that they will receive much greater circulation through publicly available channels and thereby inflame public

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[2] The United States Government has not previously released the responsive photos to the general public, but, as required by law, has provided relevant photos to civilian and military defense counsel in military courts-martial proceedings. Those disclosures have been subject to the requirements and proscriptions of the Military Rules of Evidence, the Rules for Courts-Martial, the Military Rules of Professional Conduct, and applicable military precedent.

sentiments and exacerbate tensions in sensitive geographic areas.

Sealing Portions of This Declaration

36. In some of the paragraphs of this Declaration, I provide descriptions of the records that are the subject of this litigation. The disclosure of the descriptions could reasonably be expected to endanger the lives and physical safety of persons described in paragraph 2, above. For that reason, I respectfully request the Court seal the following paragraphs: (the captions above paragraphs and) 21-23.

CONCLUSION

In light of the knowledge and information described herein, and given the provocative and offensive nature of the Darby Photos, I believe that the Darby Photos that I have identified in this declaration must be withheld in order to protect the lives of: members of the United States Armed Forces, forces operating in cooperation with the United States, and contractors operating with those forces; U.S. officials; Iraqi and Afghan police and military personnel working in coordination with our government and military forces; as well as to protect against the increased likelihood of violence against U.S. interests, personnel, and citizens worldwide.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ RICHARD B. MYERS
RICHARD B. MYERS

Date: Washington, D.C.
August 25, 2005

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civ. Action No. 04-CV-4151 (AKH)

AMERICAN CIVIL LIBERTIES UNION, ET AL., PLAINTIFFS

v.

DEPARTMENT OF DEFENSE, ET AL., DEFENDANTS

[Filed: Apr. 26, 2006]

FOURTH DECLARATION OF PHILLIP J. MCGUIRE

I, Phillip J. McGuire, declare as follows:

(1) I am the Director of the United States Army Crime Records Center ("USACRC"), U.S. Army Criminal Investigation Command ("CID") Fort Belvoir, Virginia. I have filed three previous declarations with the court in this matter (hereinafter "First McGuire Declaration", "Second McGuire Declaration" and "Third McGuire Declaration" respectively). This fourth declaration incorporates and supplements the information provided in my previous declarations.

PURPOSE OF THIS DECLARATION

(2) This declaration identifies and briefly describes photos withheld from CID documents provided to Plain-

tiffs, and provides justification for the withholding of 29 photos pursuant to FOIA exemptions (b)(6), (b)(7)(C) and (b)(7)(F).

IDENTIFICATION OF RESPONSIVE DOCUMENTS

(3) As stated in the First McGuire Declaration in paragraph 9, USACRC identified 198 CID Reports of Investigation (ROI) that were responsive to the requests of Plaintiffs in this matter. As of March 15, 2006, USACRC had processed and released all ROIs that were closed as of January 3, 2006 pursuant to the District Court's Order of January 10, 2006. Consistent with that Order, investigations in an open status as of January 3, 2006 were withheld (FOIA Exemption 7(a)). During the processing and release of the closed investigations, all pictures that contained images of individuals, regardless of status, were removed at DOD instruction for further processing. When photographs were removed from an investigation, Plaintiffs were provided with an insert page indicating that a photo maintained within the file at that location was not provided as it contained an image of an individual. A total of 358 photos were removed in this manner from the document releases provided by USACRC to Plaintiffs.

(4) In late 2005, USACRC applied the guidelines and criteria articulated by Judge Alvin K. Hellerstein at *in camera* proceedings on May 26, 2005 and August 9, 2005 to the 358 photos. Using this guidance, 329 photos were determined to be non-responsive and 29 photos were identified to Plaintiffs as responsive and withheld pursuant to FOIA exemptions (b)(6), (b)(7)(C) and (b)(7)(F). **Exhibit A** is a copy of the notification provided to Plaintiffs which identifies the photos by ROI number.

This notification inadvertently identified 28 responsive photos. The correct number is 29. These 29 photos are the subject of this Fourth McGuire Declaration and are collectively referred to in this declaration as "CID ROI Photos".

(5) The 29 photos at issue are maintained in seven CID ROI's. Each of the identified ROI's was processed and released to Plaintiffs. **Exhibit B**, attached, is an index which: identifies each photo by ROI number and date of release; describes the outcome of each ROI; identifies the location of the photo(s) within the ROI; and briefly describes each photo. I respectfully request that the photo descriptions within this exhibit be maintained under seal. **Exhibit C**, attached, describes in greater detail the nature of each ROI and the outcome of disciplinary or criminal actions taken, if any.

JUSTIFICATION OF FOIA EXEMPTIONS ASSERTED

(6) USACRC is asserting FOIA exemptions (b)(6), (b)(7)(C) and (b)(7)(F) to support the withholding of the 29 CID ROI Photos. All of these exemptions were asserted and defended in my previous three declarations, with respect to other photos and information. The justifications provided in the previous three McGuire declarations are asserted for the 29 CIO ROI Photos involved herein. Additional justification, specific to the photos at issue, is provided below.

EXEMPTIONS (b)(6) and (b)(7)(C)

(7) Unlike the content of many of the Darby photos (identified in my second and third declarations), the content of the 29 CID ROI Photos does not necessarily de-

pict criminal behavior. Many photos depict the normal processing and treatment of individuals captured during the course of the U.S. military operations in Iraq and Afghanistan. Some photos depict behavior that was determined to be inappropriate, but not criminal. All detainees pictured are clothed, mostly in their personal, civilian attire. Numerous military and U.S. government employees appear in the photos, both in uniform and in civilian-style clothing. None of the individuals who appear in the photos were prosecuted by courts-martial. Some received nonjudicial or administrative discipline.

(8) It is my determination that the individuals in the photos have an important expectation of privacy. As stated above, none of the United States military members, or other government employees, was convicted of a criminal offense with respect to the behavior represented by the photos. While some individuals most certainly engaged in misconduct, official misconduct alone does not obviate all expectations of privacy. United States military members, and other government officials operating in the theatre of war are targets for enemy aggressors. In this case, the images of these individuals, if released, will be published on the World Wide Web for viewing around the world. Government employees whose pictures are disseminated world-wide become easily identifiable, which puts the individuals, and their families back home, at much greater risk of attack, or harassment.

(9) It is also my determination that the privacy of the individual detainees justifies the withholding of the photos. The detainees depicted in these photos are wearing personal civilian clothing which, even with redactions of facial features, could be used to identify indi-

viduals. As explained in the declaration of Mr. Richard B. Jackson, the United States has an obligation to protect detainees from harassment and public curiosity. Incorporating Mr. Jackson's declaration herein, it is my opinion that the release and eventual world-wide dissemination of the photos identified by Mr. Jackson depicting certain individuals in detention would violate the privacy expectations of the detainees, as well as potentially compromise United States obligations for proper treatment of those detainees.

(10) Additionally, the public interest in the release of these photos does not outweigh the important privacy concerns of the individuals depicted. As initially stated in the First McGuire Declaration at paragraph 25, the determination of the public's interest in the disclosure of information is made by analysis of whether the information in question would inform the plaintiff or the general public about the agency's performance of its mission. In this case, the agency which holds the photos is CID Command. CID's stated mission is to conduct felony investigations into crimes that affect the persons and property of the U.S. Army. The release of these photos will in no way shed light on whether CID has adequately performed its mission to conduct investigations into the abuse of detainees. The CID ROI's which detail the entire investigations into the conduct depicted in each of the photos were released to Plaintiffs through this litigation (See release dates at Exhibit B). The pictures do not shed additional light into the agency's performance of its mission or the conduct described in the ROIs previously released to plaintiffs. Therefore, it is my analysis that the privacy interests of the individuals portrayed in the 29 CID ROI Photos outweigh any public interest in the release of the images.

EXEMPTION b(7)(F) INFORMATION WHICH COULD ENDANGER THE LIFE OF [*sic*] SAFETY OF THIRD PARTIES

(11) The First McGuire Declaration (para. 37) and the Second McGuire Declaration (paras. 8-14) have explained my basis for analysis and assertion of FOIA Exemption (b)(7)(F) to CID records withheld in this litigation. With respect to the assertion of this Exemption to the 29 CID ROI Photos, I incorporate herein the declaration of Brigadier General Carter F. Ham.

(12) Based upon the declaration and expertise of Brigadier General Ham and the previous declarations of General Myers and Ronald Schlicher, it is my determination that there is a great risk to civilians within the countries of Iraq and Afghanistan, as well as to U.S. forces located within those countries, if the 22 photos identified by Brigadier General Ham are released.

CONCLUSION

(13) For the foregoing reasons, I submit this declaration in support of the decision to withhold the set of 29 photos removed from CID ROI's previously provided to Plaintiffs, pursuant to FOIA exemptions (b)(6), (b)(7)(C) and (b)(7)(F).

Pursuant to 28 U.S.C. § 1746, I declare the foregoing to be true and correct.

Executed this 25th day of April 2006.

/s/ PHILLIP J. MCGUIRE
PHILLIP J. MCGUIRE
Director
U.S. Army Crime Records Center

EXHIBIT A

PHOTO PROCESSING
ACLU et al. v. DoD et al.

Applying the guidelines and criteria articulated by the Court *in camera*, photographic exhibits withheld from previously released Criminal Investigation Command (CID) Reports of Investigation (ROI) were processed.

329 photographs in the below listed ROIs were determined to be non responsive.

0136-03-CID259-61187	0147-04-CID259-80210
0153-04-CID146-71446	0137-04-CID899-81702
0473-04-CID023-67329	0234-04-CID259-80271
0041-03-CID899-63500	0149-03-CID469-60209
0035-03-CID259-61144	0055-03-CID349-59657
0025-04-CID469-79635	0133-04-CID452-63629
0140-03-CID389-61697	0260-03-CID259-61229
0013-04-CID789-83982	0537-04-CID034-72601
0264-03-CID259-61231	0374-04-CID093-65446
0014-03-CID919-63732	0190-04-CID259-80234
0085-03-CID939-64011	0184-04CID259-80230
0046-03-CID899-63502	0011-04-CID469-79630
0114-02-CID369-23525	0232-04-CID259-80267

0011-04-CID679-83487	0573-04-CID023-67403
0100-04-CID452-63608	0139-03-CID469-60206
0040-04-CID469-79638	0139-04-CID789-83995
0140-04-CID259-80204	0262-04-CID259-80294

28 photographs in the below listed ROIs were determined to be responsive and are withheld, consistent with the Darby photographs currently on appeal, under FOIA Exemptions 6, 7c, and 7f.

0153-04-CID146-71446
0353-03-CID093-45256
0100-04-CID452-63608
0384-04-CID023-67275
0133-04-CID452-63629
0374-04-CID093-65446
0190-04-CID-259-80234

ACLU et. al. v. DOD et. al. 04-4151 (S.D.N.Y.) (AKH)
Exhibit B, Fourth Declaration of Phillip J. McGuire

Index #	*ROI #/ Release Date*	*Description of ROI*	*ROI Photo Page #*	*Photo Description*
TAB A-1	0153-04-CID146-71446/27Oct04	Unfounded maltreatment of detainees at unknown locations in Afghanistan on 07Nov02--30Jun03	013	REDACTED-- FILED UNDER SEAL
A-2			014	REDACTED-- FILED UNDER SEAL
A-3			015	REDACTED-- FILED UNDER SEAL
A-4			017	REDACTED-- FILED UNDER SEAL
A-5			019	REDACTED-- FILED UNDER SEAL
A-6			020	REDACTED-- FILED UNDER SEAL
A-7			022	REDACTED-- FILED UNDER SEAL
A-8			023	REDACTED-- FILED UNDER SEAL
B-1	0353-03-CID093-45256/1Dec04	Unfounded cruelty and maltreatment of detainees at Camp Red, Baghdad, Iraq on 25Apr03--15Aug03	19	REDACTED-- FILED UNDER SEAL
B-2			21	REDACTED-- FILED UNDER SEAL
C-1	0010-04-CID452-63608/1 Dec 04	Alleged maltreatment of detainee at US Forces Safehouse, Al-Quaim, Iraq on 01Aug03--31Mar04	049	REDACTED-- FILED UNDER SEAL
D-1	0384-04-CID023-67275/15 Dec 04	Founded conspiracy, fail to obey, cruelty/maltreatment at Div. Central Collection Point, Iraq, 21 Dec 03	0007	REDACTED-- FILED UNDER SEAL
E-1	0133-04-CID452-63629/28 Jan 05	Founded dereliction of duty, assault (one soldier), agg. assault unfounded, FB Tycze Dae Rah Wod, Afghanistan, 5 Dec03--29 Feb 04.	8	REDACTED-- FILED UNDER SEAL
E-2			9	REDACTED-- FILED UNDER SEAL
E-3			10	REDACTED-- FILED UNDER SEAL
E-4			22	REDACTED-- FILED UNDER SEAL

E-5			23	REDACTED-- FILED UNDER SEAL
E-6			24	REDACTED-- FILED UNDER SEAL
E-7			25	REDACTED-- FILED UNDER SEAL
E-8			26	REDACTED-- FILED UNDER SEAL
E-9			27	REDACTED-- FILED UNDER SEAL
E-10			28	REDACTED-- FILED UNDER SEAL
E-11			29	REDACTED-- FILED UNDER SEAL
E-12			30	REDACTED-- FILED UNDER SEAL
E-13			31	REDACTED-- FILED UNDER SEAL
F-1	0374-04-CID093-65446/26 Feb 26	Unfounded assault, Iraq, 13 Jun 03--13 Jun 04	31	REDACTED-- FILED UNDER SEAL
F-2			31	REDACTED-- FILED UNDER SEAL
G-1	0190-04-CID-259-80234/15 Sep 05	Unfounded agg. Assault, cruelty/maltreatment, BIAP, Iraq, 4-11 Mar 04.	0056	REDACTED-- FILED UNDER SEAL
G-2			0057	REDACTED-- FILED UNDER SEAL

EXHIBIT C

Background Information on 29 Responsive Photos

All investigations triggered by allegations of detainee abuse/mistreatment.

Tab A (8 images). Images in unknown locations within Afghanistan, between 7 Nov 2002 and 30 Jun 2003. Investigation did not establish probable cause to believe that any detainee abuse occurred; images did not reveal detainee abuse or mistreatment.

TAB B (2 images). Images at Camp Red, Iraq, between 25 Apr 2003 and 15 Aug 2003. Investigation resulted in insufficient evidence to prove or disprove detainee abuse or mistreatment. Investigation further revealed that Camp Reds Standard operating procedure for detainees who became violent were to separate them from other detainees, tie hands behind them, and cover their heads with empty sandbags as a security measure to ensure that they did not harm themselves or others.

TAB C (one image). U.S. Forces safe house, Al-Quaim, Iraq, between 1 Aug 03 and 31 Mar 04. Investigation established probable cause that soldier committed aggravated assault when he pointed pistol at EPW he was guarding in Iraq. The soldier was found not guilty in non-judicial punishment proceedings under Article 15, Uniform Code of Military Justice (U.C.M.J.).

TAB D (one image). Division Central Collection point, Iraq, 21 Dec 03. Probable cause to believe that four soldiers committed offenses of conspiracy, fail to obey a lawful general order, and cruelty and maltreatment when they staged and posed for an inappropriate photo-

graph with detainees. No evidence that an assault occurred using the broom. Three soldiers received punishment under Article 15, U.C.M.J. proceedings. One soldier received a reprimand.

TAB E (13 images). Fire Base Tycze, Dae Rah Wod, Afghanistan, between 5 Dec 03 and 29 Feb 04. Investigation revealed that guards detailed to secure and protect detainees, jokingly pointed weapons at the bound detainees and took photos of the activity. Probable cause to believe that 8 soldiers committed the offense of dereliction of duty, but aggravated assault unfounded because of insufficient evident [*sic*] that the detainees were in fear for their lives, or of grievous bodily harm, or were even aware weapons were being pointed at them. There was probable cause to believe that one soldier committed assault when he struck a bound detainee in the back of the head. The soldiers involved received punishment under Article 15, U.C.M.J. proceedings.

TAB F (2 images). Iraq, various places, between 13 Jun 03 and 13 Jun 04. The so-called "Ramadi Madness" images produced by members of B Co., 1/124th Infantry Reg., FLARNG. Investigation revealed that while inappropriate, none of the images depicted criminal conduct. The investigation indicates that the two still photos were staged.

TAB G (2 images). Baghdad International Airport (BIAP), Iraq, between 4 Mar 2004 and 11 Mar 2004. Detainee depicted in images claimed he was abused while detained by U.S. Forces at Al Baghdadi and BIAP. Insufficient evidence to prove or disprove the detainee's abuse allegations.

APPENDIX I

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 04 Civ. 4151 (AKH)

AMERICAN CIVIL LIBERTIES UNION, CENTER FOR CONSTITUTIONAL RIGHTS, PHYSICIANS FOR HUMAN RIGHTS, VETERANS FOR COMMON SENSE AND VETERANS FOR PEACE, PLAINTIFFS

v.

DEPARTMENT OF DEFENSE, AND ITS COMPONENTS DEPARTMENT OF ARMY, DEPARTMENT OF NAVY, DEPARTMENT OF AIR FORCE, DEFENSE INTELLIGENCE AGENCY; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF JUSTICE, AND ITS COMPONENTS CIVIL RIGHTS DIVISION, CRIMINAL DIVISION, OFFICE OF INFORMATION AND PRIVACY, OFFICE OF INTELLIGENCE POLICY AND REVIEW, FEDERAL BUREAU OF INVESTIGATION; DEPARTMENT OF STATE; AND CENTRAL INTELLIGENCE AGENCY, DEFENDANTS

[Filed: Apr. 26, 2006]

DECLARATION OF CARTER F. HAM

Carter F. Ham, pursuant to 28 U.S.C. sec. 1746, declares as follows:

1. I am a Brigadier General in the United States Army. I am currently the Deputy Director for Regional Operations (DDRO) of the Operations Directorate on the Joint Staff at the Pentagon. The DDRO is the principal advisor to the Director for Operations, J-3, of the Joint Staff for operational matters outside of the continental United States. As such, the DDRO coordinates and communicates frequently with the staffs of US Central Command, US European Command, US Pacific Command and US Southern Command to ensure combatant command concerns are addressed by the Joint Staff. The DDRO develops and coordinates operational orders and, once the Secretary of Defense approves such orders, communicates operational orders to the combatant commands. Additionally, the DDRO manages the Global Force Management system, which, in close coordination with US Joint Forces Command, US Transportation Command and US Strategic Command, ensures the highest priority combatant command requirements are met most effectively and efficiently. The DDRO maintains oversight of the National Military Command Center. In performing my duties as DDRO, I routinely confer with and obtain advice from combatant commanders' staffs regarding the operational requirements of their commands; I evaluate and synthesize this information; and I advise and make recommendations to the Chairman of the Joint Chiefs of Staff through the Director of Operations and other members of the Joint Staff.

2. Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with this civil action and with Plaintiffs' requests for information under the Freedom of Information Act. Further, I have reviewed the 29 photographic images that are identified in Exhibit B of the Fourth Declaration of Philip J.

McGuire (collectively referred to as the "Responsive Army Photos"). For the reasons set forth in this declaration, I have concluded that the official release of the images further identified below, even if redacted to obscure identifying information, could reasonably be expected to:

a. Endanger the lives and physical safety of the Soldiers, Sailors, Airmen, and Marines in the United States Armed Forces presently serving in Iraq and Afghanistan, as well as other U.S. officials, Coalition Forces allied with the United States, and contractors serving with these forces;

b. Endanger the lives and physical safety of Iraqi civilians at large, and police and military personnel of the democratic Iraqi Transitional Government working in coordination with the United States and Coalition Forces in support of Operation IRAQI FREEDOM;

c. Endanger the lives and physical safety of Afghan civilians at large, and police and military personnel of the Government of Afghanistan working in coordination with the United States and Coalition Forces operating in support of Operation ENDURING FREEDOM, NATO-led operations, and contractors serving with these forces;

d. Aid the recruitment efforts and other activities of insurgent elements, weaken the new democratic governments of Iraq and Afghanistan, and add radical pressures on several of our regional allies and friends; and

c. Increase the likelihood of violence against United States interests, personnel, and citizens worldwide.

THE BASES FOR MY CONCLUSIONS

3. My conclusions are based upon my years of service and experience in the United States military, the assessments and evaluations of the battlefield commanders responsible for Iraq and Afghanistan, and intelligence reports and assessments of Department of Defense subject-matter experts on the Middle-Eastern region. In performing my duties, I routinely rely on the views of our combat command operations staffs, intelligence synthesis and reports, and the assessments of subject matter experts. In formulating my conclusions concerning the Responsive Army Photos, I have used the same approach, types of resources, information, and experts. In particular:

a. I have served in the United States Armed Forces for more than 30 years at various levels of command and staff. I have served in my current position as Deputy Director of Regional Operations on the Joint Staff at the Pentagon since April 2005. From August 2003 through February 2005, I was Deputy Commanding General for Training and Readiness for the US Army's I Corps, which included duty as Commander, Multi-National Brigade Northwest, Operation IRAQI FREEDOM. In the period of January 2004 to February 2005, I also was the senior U.S. commander in Mosul, Iraq, responsible for all U.S. and Coalition operations in the northern provinces of Iraq. From August 2001 to July 2003, I served in Central Command, including deployment to Qatar with the Central Command Headquarters, for the

initial phases of Operation IRAQI FREEDOM. As a result of my experiences, I have intimate, extensive knowledge of our military forces and their capabilities, as well as of the conventional and unconventional forces and capabilities of the enemies arrayed against us.

b. As Deputy Director for Regional Operations, I receive and review daily operations briefings, reports and intelligence analyses from Central Command, the Joint Staff, the Defense Intelligence Agency, the Central Intelligence Agency and the National Security Agency. I oversee the Current Operations cell in the National Military Command Center, which is responsible for reporting real-time, worldwide events affecting national security and US interests. Given my familiarity with current Operation IRAQI FREEDOM / Operation ENDURING FREEDOM events, I frequently provide briefings to the Senate and House Armed Services Committees and Congressional Delegations traveling to Iraq and Afghanistan. In short, my job requires me to be an expert in worldwide current operations.

c. In reaching my conclusions, I have reviewed and relied upon the Second Amended Declaration of former Chairman of the Joint Chiefs of Staff, General Richard B. Myers, dated August 25, 2005, that was submitted to this Court regarding the so-called Darby photos. *See* Second Amended Declaration of Richard B. Myers, dated August 25, 2005, ¶¶ 2, 24-26.

d. With respect to this matter, I also have solicited and relied upon the assessments and recommendations of the following three individuals regarding

their views of the military implications of release of the Responsive Army Photos: 1) General John P. Abizaid, Commander, U.S. Central Command, who is the ultimate military Commander responsible for the geographical area that includes both Iraq and Afghanistan; 2) General George Casey, the commander of the Multi-National Forces-Iraq (the ultimate military commander in Iraq of the coalition armed forces); and 3) Lieutenant General Karl W. Eikenberry, Combined Forces Command Afghanistan (the ultimate military commander in Afghanistan of the coalition armed forces). Each of these three commanders, by virtue of their positions and responsibilities and their immediate visibility of the battlefield environment, have highly informed opinions that I have considered in this matter. Each of these three commanders agree with and support my conclusions about release of the Responsive Army Photos.

e. As I indicated above, I have also considered and relied upon the analysis and assessments of DOD resident subject-matter experts on the Middle-Eastern region.

OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM

4. Following the attacks on the United States of September 11, 2001, the United States military, with the support of a worldwide coalition, launched Operation ENDURING FREEDOM to drive the oppressive Taliban regime—which provided comfort and support to al-Qaeda terrorists—from Afghanistan. As a result of that successful effort, the Taliban was removed from power, and on October 9, 2004, the Afghan people for the first

time ever selected their head of state, the president of Afghanistan, by democratic vote. Operation IRAQI FREEDOM was launched, again with the support of a worldwide coalition, to remove the dictatorial regime of Saddam Hussein from power, with the aim of ending an active threat to the safety of the U.S. and fostering the establishment of a democratic form of government in Iraq. Following a brief period when Iraq was led by a Coalition Provisional Authority, sovereignty of Iraq was transferred to an interim government, and democratically elected representatives of the Iraqi people are in the process of completing work on a national constitution. There is, however, more work to do. Insurgent elements in both Afghanistan and Iraq continue to attack the process of democratic transition in those countries by mounting violent and deadly assaults against the multinational forces that remain posted in the region in order to protect and defend those countries as they take their steps toward freedom. As part of the multinational commitment to strengthening and defending these emerging democracies, more than 23,000 U.S. troops remain on the ground in Afghanistan and over 132,000 U.S. troops are part of the ongoing mission in Iraq.

5. As General Myers' declaration sets forth in more detail, perceived mistreatment or humiliation of detainees in the custody of the United States Armed Forces has been exploited or misrepresented for violent ends in Iraq, Afghanistan and elsewhere in the Middle East. *See* General Myers' Decl. ¶¶ 8, 14-19, 24-29. A prime example of such violence was the rioting that occurred as a result of a *Newsweek* report—later retracted—of alleged abuse of the Koran by United States' personnel. *Id.* ¶¶ 14-19.

A. *Current Situation in Iraq*

6. The situation on the ground in Iraq remains dynamic and dangerous in Baghdad and several other parts of the country. It changes from day to day, and it varies from region to region. Insurgent attacks against Coalition Forces in Iraq average about 1,700 attacks per month. However, significant events can cause those levels to spike to approximately 2,500 insurgent attacks per month.

7. As General Myers' declaration makes clear, one of the goals of the insurgency is to use violence against innocent civilians to undercut the mission of the U.S. and Coalition forces, as well as the Iraqi Transitional Government, and to stop the transition to democracy in that country. Thus, the insurgents will use any means necessary to incite violence and, specifically, have and will focus on perceived U.S. or Coalition mistreatment of Iraqi civilians and detainees as a propaganda and recruiting tool to aid their cause.

8. For example, two British soldiers were killed and another was injured in Amarah, Iraq, by way of an Improvised Explosive Device in February 2006. Open sources linked these killings to recent use of a 2004 video of British soldiers beating Iraqi youths in the Amarah area. Amarah, which is located north of Basra in the British-controlled Maysan province, is dubbed the "Wild West" by British troops and has been the focus of heavy attacks by insurgents There had been warnings in the Arab media that there could be reprisals against British forces in the area as a result of the video. The warnings proved true. More than 1,000 protestors, many of them supporters of Shia cleric Muqtada al-Sadr,

gather and shouted slogans against the alleged abuse of the youths in Amarah. The release of the tape inflamed tensions and led to the ruling council of Maysan province making a public declaration that they would suspend cooperation with all British forces and officials. Members of Shiite political groups opposed to the U.S.-led coalition appeared to have engineered that move, apparently seeking to exploit public sensitivities after attempts by the British to be more aggressive with Shiite militias.

B. ***Current Situation in Afghanistan***

9. The situation on the ground in Afghanistan also remains volatile. In addition to the details set forth in General Myers' declaration, the most recent estimates indicate that there are about 250 insurgent attacks per month against the Coalition Forces, which forces operate in support of the Government of Afghanistan. The insurgency in Afghanistan relies heavily on aggressive information operations to turn perceived insult or deprecation towards Islam into causes for violent uprisings.

10. As noted in General Myers' declaration, when *Newsweek* incorrectly reported that U.S. military personnel at Guantanamo Bay, Cuba had desecrated the Koran, at least eleven people died and many were hurt during several anti-U.S. protests in Afghanistan. Open sources reported that two United Nations guest-houses were attacked, as were shops and government buildings. Two offices of international aid groups were destroyed. And uprising of Muslims was not limited to Afghanistan. Open sources reported that about 12,000 people gathered in Egypt, many of them supporters of the outlawed Muslim Brotherhood. About 30 people were injured

during that protest. A similar number gathered in Beirut, Lebanon, where the crowd carried black banners and burned American and Israeli flags. In Bangladesh's capital of Dhaka, about 5,000 people rallied after Friday prayers, spitting on U.S. flags and burning them. While doing so, they shouted "Death to America!" and "Destroy America!"

11. The recent reaction to re-publication of the Danish cartoon of the Prophet Muhammad is another example of images being used in information operations to stir violent reactions in Afghanistan. In January 2006, a Norwegian publication reprinted a Danish cartoon depiction of the Prophet Muhammad. As a direct result, open sources reported that at least eleven people were killed in Afghanistan, including two people who died when protesters turned on the U.S. airbase at Bagram. As a result of the cartoon, violence erupted elsewhere as well. Again, open sources reported that the cartoon sparked violence between Nigeria's Muslim and Christian communities, leaving nearly 150 people dead and thousands displaced after five days of violence. Five protestors were killed in Pakistan during demonstrations. One teenage boy died in Somalia after protestors attacked police. In Turkey—where U.S. forces are also stationed—a Catholic priest was killed, allegedly by a teenage shooter who was influenced by the cartoon. Protestors also attacked the Danish embassies in Iran, Syria and Lebanon. In addition to these violent reactions, open sources reported protests at many locations in reaction to the Muhammad cartoon.

THE RESPONSIVE ARMY PHOTOS

12. I have personally reviewed the 29 responsive photographic images that are identified in Exhibit B of the Fourth Declaration of Philip J. McGuire.

13. [SEALED]

14. [SEALED]

15. [SEALED]

16. [SEALED]

17. [SEALED]

CONCLUSIONS AFTER REVIEWING THE RESPONSIVE ARMY PHOTOS

18. Based on my review, I believe that official release of the 22 Responsive Army Photographs described in paragraphs 13-16 above will pose a clear and grave risk of inciting violence and riots against American troops and coalition forces. I also believe that release of the Responsive Army Photos will expose innocent Iraqi, Afghan, and American civilians to harm as a result of the insurgency's reaction, which will likely involve violence and rioting. It is probable that the insurgents and other groups will seize upon these images as grist for their propaganda mill, which will result in, besides violent attacks, increased terrorist recruitment, continued financial support, and exacerbation of tensions between the Iraqi and Afghan populaces and U.S. and Coalition Forces.

19. My opinion is based upon the information set forth in General Myers' declaration, including but not limited to the vitriolic and violent reaction to *Newsweek's* Koran report, as well as the updated assessment

of the conditions in Iraq and Afghanistan, which is informed by the violence arising out [*sic*] the publication of cartoons depicting the Prophet Muhammed and release of a British video depicting the mistreatment of Iraqi nationals. Release of these Responsive Army Photos will be portrayed as part of an alleged, continuing effort of the United States to humiliate Muslims and, given the patterns of violence observed there, will be used by the insurgents as propaganda to increase calls for violence against U.S. and Coalition personnel. I believe that if the Responsive Army Photos are released, riots, violence, and attacks by insurgents will result.

20. I am also concerned that, while the photographs are illustrative of isolated activity, their graphic and offensive nature will make it easy to falsely generalize from those images and impugn the United States Armed Forces as a whole, thereby generating a more vehement —and violent—reaction. The offensiveness of these images will make it more difficult to counteract calls for violence against U.S. and Coalition Forces.

Redaction of the Responsive Army Photos Does Not Alter These Conclusions

21. Redaction of the Responsive Army Photos to obscure individuals' faces and identifying information does not change my opinion. Release of the photographs, even in redacted form, will very likely lead to riots and violence in Iraq, Afghanistan and elsewhere in the Middle East, posing grave risk to both military forces and civilians. This is because the privacy concerns of the detainees are separate and distinct from the inflammatory nature of the images depicted in the Responsive Army Photos—and thus the risk of harm to our personnel—which remains apparent despite redaction.

Sealing Portions of This Declaration

22. In some of the paragraphs of this Declaration, I provide descriptions of the records that are the subject of this litigation, and I respectfully request that the Court seal the paragraphs 13-17.

CONCLUSION

In light of the knowledge and information described herein, and given the inflammatory nature of the Responsive Army Photos, I believe that the Responsive Army Photos that I have identified in this declaration must be withheld in order to protect the lives of: members of the United States Armed Forces, forces operating in cooperation with the United States, and contractors operating with those forces; U.S. officials; Iraqi and Afghan police and military personnel working in coordination with our government and military forces; as well as to protect against the increased likelihood of violence against U.S. interests, personnel, and citizens worldwide.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ CARTER F. HAM
CARTER F. HAM

Date: Washington, D.C.
April 26, 2006

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APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 06-3140-cv

AMERICAN CIVIL LIBERTIES UNION, ET AL.,
PLAINTIFFS-APPELLEES

v.

DEPARTMENT OF DEFENSE, ET AL.,
DEFENDANTS-APPELLANTS

[Filed: May 28, 2009]

DECLARATION OF GENERAL DAVID H. PETRAEUS

I, General David H. Petraeus, pursuant to 28 U.S.C. 1746, hereby declare as follows:

(U) 1. I currently serve as the Commander of United States Central Command (USCENTCOM). This Combatant Command was established by the President pursuant to Title 10, U.S. Code, Section 161. USCENTCOM seeks to promote cooperation, to respond to crises, to deter aggression, and when necessary, to defeat our adversaries in order to promote security, stability, and prosperity within the USCENTCOM

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Area of Responsibility (AOR). The USCENTCOM AOR stretches across more than 4.6 million square miles and 20 countries located through the Middle East and Central Asia, including Iraq, Afghanistan, and Pakistan. The statements in this declaration are based upon my personal knowledge and upon information made available to me in the performance of my official duties.

(U) 2. Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with this civil action and have reviewed the 21 photographic images that the district court ordered released on 21 June 2006, and that are the subject of the appeal in ACLU v. Department of Defense, 543 F.3d 59 (2d Cir. 2008). I am also aware that in addition to the 21 images specifically addressed in the appeal before the Second Circuit, there is a substantial number of additional images that are responsive to the Freedom of Information Act request in this case. For the reasons set forth in this declaration, I have concluded that the official release of those images, even if redacted to obscure identifying information, could be reasonably expected to adversely impact current military, political, and civil efforts in the USCENTCOM AOR. In addition to fueling civil unrest, causing increased targeting of U.S. and Coalition forces, and providing an additional recruiting tool to insurgents and violent extremist groups, the destabilizing effect on our partner nations cannot be underestimated. Many of our partner nations in the region struggle with their populations' perceptions that they are merely instruments of the U.S. government and do not have their citizens' best interests at heart. These perceptions are directly fueled by extremist groups' expert

public affairs campaigns to win "hearts and minds" across the USCENTCOM AOR and to recruit new members. Nowhere are USCENTCOM's efforts to win this struggle, by strengthening the legitimacy and efficacy of host nation governments, more critical than in Pakistan, Afghanistan, and Iraq. The release of images depicting U.S. servicemen mistreating detainees in Iraq and Afghanistan, or that could be construed as depicting mistreatment, would likely deal a particularly hard blow to USCENTCOM and U.S. interagency counterinsurgency efforts in these three key nations, as well as further endanger the lives of U.S. Soldiers, Marines, Airmen, Sailors, civilians, and contractors presently serving there.

(U) 3. My conclusions are based on my years of service and experience in the United States military; intelligence and operations reports, as well as assessments of the situation in the USCENTCOM AOR, and Pakistan, Afghanistan and Iraq specifically; assessments and evaluations of my subordinate commanders; the declarations made previously in this case; and regular interaction with both military and civilian leadership of the nations in the USCENTCOM AOR. In particular:

a. (U) I have served in the United States Army for 35 years at various levels of command and staff. I have commanded at the battalion, brigade, division, Multi-National Force-Iraq (MNF-I) and theater levels, including at the two-, three-, and four-star levels in Iraq. My staff experience includes serving as the Executive Assistant to the Chairman of the Joint Chiefs of Staff; Aide to the Chief of Staff of the Army; Military Assistant to Supreme Allied Commander-Europe; Chief of

Operations of the United Nations Force in Haiti; and Assistant Chief of Staff for Operations of the NATO Stabilization Force in Bosnia.

b. (U) I have extensive experience in Iraq, including command at the division and theater levels. In addition to commanding Multi-National Force-Iraq (MNF-I) for over 19 months prior to taking command of USCENTCOM, I commanded the 101st Airborne Division (Air Assault), during the first year of Operation Iraqi Freedom. I was also the first commander of Multi-National Security Transition Command-Iraq from June 2004 to September 2005, and the commander of the NATO Training Mission-Iraq from October 2004 to September 2005. Prior to my tour as MNF-I commander, I commanded the U.S. Army Combined Arms Center and Fort Leavenworth, during the development and publication of both the U.S. Army Field Manual 3-24, *Counter-insurgency*, and U.S. Army Field Manual 2-22.3, *Human Intelligence Collector Operations*.

c. (U) As a result of this experience, I have intimate and extensive knowledge of our military forces and interagency partners and their capabilities, as well as those of the enemies who threaten U.S., Coalition, Iraqi, Afghan, and Pakistani forces and interests.

d. (U) As the Commander of USCENTCOM, I receive daily intelligence and operations briefings regarding the political, economic, diplomatic, and security environment in the countries in the USCENTCOM AOR, with particular emphasis on Pakistan, Afghanistan, and Iraq. These briefings are produced by sub-

ject-matter experts, and I rely on and trust their expertise and insights.

e. (U) I frequently travel throughout the USCENTCOM AOR to personally view the situation across the region. During these missions, I receive reports from subordinate operational and tactical commanders who provide insights from the local and regional levels. I also meet regularly with national political and military leaders.

f. (U) I reviewed and relied upon the Declaration of Brigadier General Carter F. Ham, dated April 26, 2006, and the Second Amended Declaration of the former Chairman of the Joint Chiefs of Staff, General Richard B. Myers, dated August 25, 2005, which were submitted to the district court regarding photos purporting to show detainee abuse.

g. (U) I strongly condemn any misconduct and abuse depicted in these images that were the responsibility of U.S. military personnel. I am committed to ensuring all detainees in the USCENTCOM AOR are treated humanely, and that any allegation of detainee mistreatment is immediately investigated and appropriate disciplinary action taken. In fact, as Commander of both MNF-I and USCENTCOM, I have repeatedly stressed that we must "live our values," and not only ensure U.S. servicemen treat detainees humanely, but that the nations we are assisting also do the same. Early on in our operations in Iraq in the late spring of 2003, I directed the 101st Airborne Division commanders to ensure observance of the Geneva Conventions regarding treatment of those we detained. As the Commander of

MNF-I, I directed MNF-I forces to intervene to stop abuse if it occurs, and to prevent abuse through education, training, and mentoring.

PAKISTAN

(U) 4. The need to establish a trusting, mutually beneficial U.S.-Pakistan partnership is pressing, yet the ability to do so is severely challenged by current events. The Government of Pakistan (GOP) faces a burgeoning threat from the Taliban, indigenous Pakistani militant groups, and foreign extremists in Pakistan's Federally Administered Tribal Areas (FATA) and Northwest Frontier Province (NWFP).

(U) 5. To counter this threat, Pakistan's Frontier Corps (FC) commenced security operations in the area in late-August 2008. Despite these efforts, which were undermined by a wavering commitment from the GOP, the security situation in Pakistan deteriorated further. The Taliban quickly came to control the entire Swat Valley in the NWFP. Pakistan's leaders became anxious to develop a means of restoring stability and order to the region. The GOP entered into peace talks with NWFP militants who proffered a diplomatic solution, including the implementation of Shari'a law within the Swat Valley and the Malakand Division. In exchange, the GOP agreed that the Pakistan Military would cease operations and the militants would lay down their arms.

(U) 6. This arrangement was short-lived, however, and disagreements quickly arose over the militants' immediate and brutal implementation of Shari'a law in Swat Valley. The militants resumed offensive operations and by late-April 2009, they had pushed to within

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60 miles of Islamabad, Pakistan's capital. As militant influence grew toward the urban heart of the country, the international community and civil society groups became increasingly alarmed, forcing the government to recognize the growing threat and deploy the Pakistan Military. While the current offensive by the Pakistan Military seems their most serious effort to date, enduring success against the militants has yet to be seen, and several hundred-thousand Pakistani civilians have been displaced in the latest fighting.

(U) 7. The stabilization of Pakistan via a strong partnership with the United States is critical. Violent Extremist Organizations (VEO), Al Qaeda (AQ) and the Taliban not only destabilize Pakistan, they undermine the regional stability necessary for fulfillment of U.S. goals in the region. Al Qaeda and Associated Movements (AQAM) use the ungoverned space of the FATA to plan for and train terrorists intent on attacking the U.S. and U.S. interests abroad, including sending fighters across the border into Afghanistan.[1] Even with new supplemental distribution networks, sustainment operations of U.S. forces in Afghanistan are highly dependent on air and ground routes through Pakistan. Separately, the security of the Pakistani nuclear arsenal is of concern, and it is not entirely inconceivable that a country like Pakistan, facing many complex problems, could deteriorate at a pace that would challenge their and our best capabilities to restore order.

(U) 8. Newly released photos depicting abuse of detainees in U.S. military custody in Afghanistan and Iraq

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[1] ~~(S)~~ [REDACTED]

would negatively affect the on-going efforts by Pakistan to counter its internal extremist threat. Anti-U.S. sentiment has already been increasing in Pakistan. Most polling data reflects this trend, especially in regard to cross-border operations and reported drone strikes, which Pakistanis perceive to cause unacceptable civilian casualties. In June 2008, 45% of Pakistanis said that U.S. presence in the region was a threat to Pakistan, and that jumped to 54% in October 2008. It may be higher today, and will certainly increase if new detainee abuse photos are released. Most Pakistanis also feel that U.S.-Pakistan cooperation does not "mostly benefit" Pakistan (2% in October 2008, down from 7% in June 2008). While other polling data show minor improvements in US-Pakistan relations, 63% of Pakistanis still oppose cooperating with the U.S. on counter-terror operations, and 35% say they do not support U.S. strikes into Pakistan, even if they are coordinated with the GOP and the Pakistan Military ahead of time. Preventing Pakistan-based militants from exacerbating strained U.S.-Pakistan tensions has been very difficult for the GOP in recent months and years. Release of images depicting, or that could be construed as depicting, U.S. forces abusing detainees who would likely be depicted as "fellow Muslims" would undermine this effort.

(U) 9. Based on historical precedents, such as the publication of Danish cartoons depicting the Prophet Mohammed in late 2005 and a Newsweek article erroneously highlighting desecration of the Koran by U.S. military members in 2006, civil unrest via spontaneous demonstrations in Pakistan's largest cities would be a likely result of publication of images depicting U.S. abuse of

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detainees in its custody in Iraq and Afghanistan. Militant and extremist groups would use these images to foment anti-U.S. sentiment and to incite demonstrators to conduct deliberate attacks against U.S. targets,[2] as well as western Non-Government Organization (NGO) facilities and personnel.[3]

~~(S)~~ 10. [REDACTED]

AFGHANISTAN

(U) 11. Afghanistan's nationwide violence is presently 95% higher than it was during this same period last year. The increase in violence is expected to continue throughout the summer following the conclusion of the spring poppy harvest. Fighters will refocus on conducting insurgent operations and additional U.S. forces will begin operations. Despite recent U.S. and International Security Assistance Force (ISAF) operations to disrupt insurgents in southern Afghanistan, insurgents continue planning for organized attacks against the provincial capitals of Helmand and Kandahar Provinces. The end of the poppy harvest in southern Afghanistan will likely lead to a significant increase in violence there, once again surpassing that of violence in all other regions.

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[2] ~~(S)~~ [REDACTED]

[3] ~~(C)~~ [REDACTED]

[4] (U) Release of detainee abuse images depicting, or that could be construed as depicting, U.S. forces abusing detainees in its custody in Iraq and Afghanistan could reasonably be expected to endanger the life or physical safety of diplomatic personnel via invigorated kidnapping and assassination attempts.

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(U) 12. Newly released photos depicting, or that could be construed as depicting, abuse of detainees in U.S. military custody in Iraq and Afghanistan would place U.S. servicemen in Afghanistan at heightened risk and corrosively affect U.S. relations with President Karzai's government, as well as further erode control of the Afghan government in general. Spontaneous demonstrations might occur in Kabul, Kandahar City, Mazar e Sharif and other population centers in Afghanistan. Public condemnations by Afghan leaders and insurgency leaders would be certain. An influx of foreign fighters from outside Afghanistan and new recruits from within Afghan [*sic*] could materialize, as the new photos serve as potent recruiting material to attract new members to join the insurgency. New photos would also serve to enhance fund-raising efforts for insurgent sympathizers across the Muslim world. Attacks against newly-arriving U.S. Marines and soon-to-arrive U.S. Army units in the south, and transitioning U.S. Amy units in the east, could increase, thus further endangering the life and physical safety of military personnel in these regions.

(U) 13. Attacks against Afghan offices and government leaders in Kabul and provincial capitals could also occur, as could attacks against the primary ground line of communication or disruption of the Northern Distribution Network. The Afghan presidential election cycle might also be disrupted. Indeed, Taliban and insurgent forces have stated that disrupting the 2009 presidential elections is one of their objectives. Release of the photos would make attacks and disruptions even more likely. Coordinated attacks focused on polling stations or destruction of votes could raise concerns over the valid-

ity of the elections, and any hint of improper elections would exacerbate perceptions that the Afghan government lacks legitimacy. Managing preparations for Afghanistan elections, while simultaneously enduring protests and public condemnations from Afghanistan leaders regarding detainee images and civilian casualties caused by U.S. air strikes, would make the situation very challenging for U.S. and ISAF forces. Perhaps most importantly, release of the photos could undermine U.S. goals in the region, particularly if Muslim sensitivities become inflamed and Muslim willingness to work with the U.S. is degraded, which would be likely with publication of photos depicting, or that could be construed as depicting, U.S. detainee abuse of detainees in its custody in Iraq and Afghanistan.

(~~S//~~REL [REDACTED]) 14. [REDACTED]

(~~S//~~REL [REDACTED]) 15. [REDACTED]

IRAQ

(U) 16. Iraq continues to sustain progress in security and stability, but the progress remains fragile and reversible. Despite security gains, Sunni and Shi'a extremists continue to pose threats to Iraq's security. While overall violence decreased significantly[5] in 2008, a string of high profile attacks aimed at Iraqi Shi'a in Baghdad, from late-March to early-May of this year, demonstrated the tenuous nature of Iraq's present security environment. These attacks highlight the lethality of small terrorist cells despite their reduced capacity. Shi'a extremist-related violence appears to be largely

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[5] ~~(S)~~ [REDACTED]

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focused against U.S. forces. The focus of the Sunni insurgency has been pushed into parts of Northen Iraq as Coalition forces, Iraqi Security Forces (ISF), and Sons of Iraq (SOI) have worked to limit Sunni insurgent freedom of movement. Meanwhile, Iraq's security responsibilities are in a period of transition as responsibilities shift from Coalition Forces to Iraqi Security Forces, per the terms of the Iraqi-US Security Agreement that went into effect on 1 January 2009.

(U) 17. Newly released photos depicting abuse, or that could be construed as depicting abuse, of Iraqis in U.S. military custody would inflame emotions across Iraq and trigger the same motivations that prompted many young men to respond to calls for jihad following the Abu Ghraib photo release. After the Abu Ghraib photos were publicized in 2004, there was a significant response to the call for jihad, with new extremists committing themselves to violence against U.S. forces. Al-Qaeda in Iraq (AQI) and Sunni insurgents groups in Iraq will likely use any release of detainee abuse images for propaganda purposes, and possibly as an opportunity to widen the call for jihad against U.S. forces, which could result in a near-term increase in recruiting and attacks. Anti-American and anti-Iraqi government protests can also be expected, with most of the anger likely directed towards the U.S. presence.[6] With national elections approaching later in the year, Iraqi politicians can be expected to use the detainee images as fodder for their campaigns, especially in response to anti-U.S. sentiment that may increase as elections draw near and

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[6] ~~(C)~~ [REDACTED]

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final U.S. withdrawal becomes more imminent. Additionally, pressure will mount on the Prime Minister to allow for a national referendum on the Security Agreement and the Strategic Framework Agreement.

(U) I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 27th May 2009.

/s/ DAVID H. PETRAEUS
DAVID H. PETRAEUS
General, U.S. Army
Commander, USCENTCOM4

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APPENDIX K

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 06-3140-cv

AMERICAN CIVIL LIBERTIES UNION, ET AL.,
PLAINTIFFS-APPELLEES

v.

DEPARTMENT OF DEFENSE, ET AL.,
DEFENDANTS-APPELLANTS

[Filed: May 28, 2009]

DECLARATION OF GENERAL RAYMOND T. ODIERNO

I, General Raymond T. Odierno, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. (U) I am the Commander of Multi-National Force-Iraq (MNF-I). MNF-I is the strategic headquarters responsible for coalition operations in Iraq. I have served in the Iraq Theater of Operations (ITO) for 36 months in the past six years. The statements in this declaration are based upon my personal knowledge and upon information made available to me in the performance of my official duties. In relevant areas I will relate the views and opinions of senior Iraqi leaders.

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2. (U) Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with this civil action and have reviewed the 21 photographic images ("the photos") that the district court ordered released on June 21, 2006, that are the subject of the appeal in *ACLU v. Department of Defense*, 543 F.3d 59 (2d Cir. 2008). For the reasons set forth in this declaration, I have concluded that the official release of these images, even if redacted to obscure identifying information, could reasonably be expected to:

a. (U) Endanger the lives of U.S. and coalition Soldiers, Airmen, Marines, Sailors, civilians, and contractors presently serving in Iraq;

b. (U) Endanger the lives of Iraqi civilians, police, military personnel and government officials;

c. (U) Aid in the recruitment and financing of extremists and insurgent groups; and

d. (U) Undermine the improving security conditions in Iraq.

3. (U) My conclusions are based on my years of service and experience in the United States military in general and Iraq in particular, intelligence and operations reports and assessments of the situation in Iraq, the assessments and evaluations of my subordinate commanders, the declarations made previously in this case, and regular interaction with Iraqi leaders. In particular:

a. (U) I have served in the United States Army for over 32 years at various levels of command and staff. I have commanded units at every echelon, from platoon

to theater. My staff experience includes serving as the Assistant to the Chairman of the Joint Chiefs of Staff, where I was the primary military advisor to Secretaries of State Colin Powell and Condoleezza Rice. I have extensive experience in Iraq, including command at the division, corps, and theater levels. I commanded the 4th Infantry Division, which was headquartered in the Sunni Triangle, when it was deployed to Iraq from April 2003 to March 2004. I commanded the Multi-National Corps-Iraq, which is the operational command responsible for coalition forces throughout Iraq, from December 2006 to February 2008, during the surge of U.S. forces. I assumed my current command at Multi-National Force-Iraq, which is the strategic command responsible for coalition operations in Iraq, in September 2008. As a result of this experience, I have intimate and extensive knowledge of our forces and their capabilities, as well as those of the enemies who threaten U.S., Coalition, and Iraqi forces and interests.

b. (U) I receive daily intelligence and operations briefings regarding the political, economic, diplomatic, and security environment in Iraq. These briefings are produced by subject-matter experts, and I rely on and trust their expertise and insights.

c. (U) I frequently travel throughout Iraq to see firsthand the situation across the country. During these missions, I receive reports from subordinate operational and tactical commanders who provide insights from the local and regional levels.

d. (U) I reviewed and relied upon the Declaration of Brigadier General Carter F. Ham, dated April 26,

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2006, and the Second Amended Declaration of the former Chairman of the Joint Chiefs of Staff, General Richard B. Myers, dated August 25, 2005, which were submitted to the district court regarding photos purporting to show detainee abuse.

e. (U) I am constantly engaged with the senior political leaders in Iraq, who share with me their unique insights into the conditions within their country. As the conflict on Iraq will impact their nation for decades to come, I find their perspective to be persuasive.

4. (U) I strongly believe the release of these photos will endanger the lives of U.S. Soldiers, Airmen, Marines, Sailors and civilians as well as the lives of our Iraqi partners. Certain operating units are at particular risk of harm from the release of the photos. One example is our training teams throughout Iraq. These are small elements of between 15 and 30 individuals who live on Iraqi-controlled installations and thus do not have the same protections afforded to many of our service members. In addition, as they assist our Iraqi partners, members of such teams are regularly engaged in small-unit patrols, making them more vulnerable to insurgent attacks or other violence directed at U.S. forces. Accordingly, there is good reason to conclude that the soldiers in those teams and in similarly situated units would face a particularly serious risk to their lives and physical safety.

5. (U) The publication of these photos will be likely to significantly and adversely impact the MNF-I mission to develop a strategic partnership with a stable, secure, prosperous, and democratic Iraq that reflects its

society and culture, stands as an ally in the war on terror, and contributes to peace and stability in the region. The photos will likely cause a very public and emotional response in Iraq and in the larger Arab world because the images may touch on a number of deep-rooted Arab cultural values that will resonate with the Iraqi public. The Iraqi public, if inflamed with emotion, may be easily manipulated by competitors seeking to exploit this opportunity to their full advantage. Many Arabs harbor long-standing perceived grievances against the west in general and the U.S. in particular. The release of these photographs likely will only fuel this resentment.

6. (U) In April 2004, news organizations published reports of U.S. abuses of Iraqi detainees that publicly disseminated an initial set of photographs taken at the Abu Ghraib prison. Extremist organizations including al Qaeda in Iraq (AQI) and Islamic State of Iraq (ISI) used the revelations of detainee abuse and copies of associated photographs to recruit and motivate organization members. The graphic revelations of detainee abuse motivated some terrorists including foreign fighters from Syria, Yemen and Saudi Arabia to join the jihad. Reporting also indicates that some organizations may have staged and disseminated photographs of Arab women being abused by men in U.S. uniforms. Extremist groups initially misrepresented the depicted abuse as evidence of the widespread rape of female Iraqi detainees by U.S. soldiers as a further motivation for recruitment and to support the exhortation for attacks against Coalition Forces (CF).

7. (U) The public dissemination of detainee abuse photos in 2004 likely contributed to a spike in violence in

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Iraq during the third quarter of 2004 as foreign fighters and domestic insurgents were drawn to Iraq to train and fight. Attacks on CF increased from around 700 in March 2004 to around 1800 in May (after the photographs were broadcast and published) and 2800 in August 2004. Attacks on CF did not subside to March 2004 levels until June 2008. These increased attacks resulted in the death of CF, Iraqi forces, and civilians.

8. (U) The 2004 publication of detainee photos resulted in a number of postings on internet websites. In May 2004, one posting called for the dissemination of photographs depicting Iraqi women being raped in U.S. prisons, "because now the timing is better than ever." Another posting referenced "torture and rape" of Muslims in Iraqi prisons, while calling for Saudi security forces to refrain from assisting CF. In June 2004, several Islamist, Jihadist, and Salafist websites provided links to an audio message, purportedly made by al-Qaeda leader Abu Musab al-Zarqawi. The message included a threat to kill the Prime Minister of Iraq, Ayad Allawi, and referred to alleged degrading treatment suffered by female detainees.

9. (U) Perhaps the most gruesome of internet reactions to the photo publication was a video posted in May of 2004 showing the decapitation murder of U.S. contractor Nicholas Berg. A man believed to be Zarqawi specifically made the linkage between the abuses at Abu Ghraib and Berg's murder, saying, "And how does a free Muslim sleep comfortably watching Islam being slaughtered, and [its] dignity being drained. The shameful photos are evil humiliation for Muslim men and women in the Abu Ghraib prison. . . . We tell you

that the dignity of the Muslims at the Abu Ghraib prison is worth the sacrifice of blood and souls. We will send you coffin after coffin and box after box slaughtered in this way." The June 2004 kidnapping and murder of U.S. contractor Paul Johnson, Jr. and other anti-Western incidents in Saudi Arabia were possibly influenced by the coverage of Berg's kidnapping and murder.

10. (U) While conditions in Iraq have improved since the declaration of BG Ham and Gen Myers, I concur with their overall assessment of the potential impact of releasing images purporting to show detainee abuse. Extremist groups will likely use any means necessary to incite violence and, specifically, have and will likely focus on perceived U.S. or Coalition mistreatment of Iraqi civilians and detainees as a propaganda and recruiting tool to aid their cause. *See* BG Ham's Decl. ¶ 7 and Gen Myers' Decl. ¶ 8. The next six to eight months are a time of particular fragility in Iraq. Withdrawal of U.S. combat forces from Iraqi cities, villages, and localities, elections for the Kurdistan Regional Government, a national referendum on the Security Agreement, a national census, and national elections are tipping points in the near future that extremist groups reinvigorated by release of the photos may seek to manipulate through violence.

11. (U) MNF-I will likely experience an increase in security incidents particularly aimed at U.S. personnel and facilities following the release of the photos. Incidents of spontaneous violence against U.S. Forces, possibly including attacks from outraged Iraqi police or army members are likely. This could weaken our partnership with the Iraqi Security Forces, decrease secu-

rity, and lead to more violence. Attacks against soft targets which represent visible symbols of U.S. presence or culture are also likely. Such increased attacks will put U.S. Forces, civilians, and Iraqi partners at risk of being killed, injured, or kidnapped. The photos will likely be used as a justification for adversaries conducting retribution attacks against the U.S. for bringing shame on Iraq.

12. (U) Sunni ethno-sectarian nationalist and Islamist resistance groups, Salafist-jihadist extremist groups and Shia armed militia groups all oppose the U.S. presence and will likely attempt to exploit the release in their propaganda campaigns. Anti-U.S. groups will likely attempt to misrepresent the photos as evidence of continuing U.S. misconduct and noncompliance with international law and the standards of a humane and civilized society. The U.S. will also likely be portrayed as the continuing oppressor of Iraqis, Arabs and Muslims. In addition, opponents of a U.S. presence, such as the Sadrists and Iran, may use the photographs as propaganda supporting calls for a referendum on the U.S.-Iraq bilateral security agreement. The release of the photographs is likely to harden existing anti-US opinion in the Council of Representatives (COR), and in local and regional media.

13. (U) These propaganda measures will likely increase popular and financial support for anti-U.S. groups and may have a positive influence on recruitment for some groups. In particular, Sadrist political figures and their associated groups may respond to the release of photos by calling for mass demonstrations against the continuing presence of U.S. forces in Iraq.

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14. (U) The Security Agreement Referendum is scheduled for this summer. The release of the photos may incite the Iraqi public and cause the referendum to be defeated. If the referendum is defeated, U.S. Forces will be required to leave Iraq earlier than scheduled, further destabilizing the region and leaving Iraq vulnerable to outside influences, especially from Iran.

15. (U) MNF-I detainee release and reconciliation initiatives may be impacted as adversaries exploit these images to increase recruiting and motivate members to conduct attacks against the U.S. Iraqi community and political leaders will likely seek to avoid any potential liability associated with ties to U.S. detainee operations. Detainees released from our facilities may provide a focused target for extremist recruiting by characterizing all former detainees as having an obligation to restore the honor taken from the specific victims in the photos. This characterization may gain momentum among those detainees who were already vulnerable due to unemployment or community hostility by making them believe that the taint of their detention in a U.S. facility leaves them with no options.

16. (U) I believe these images will be used to inflame outrage against the U.S. and be used by terrorist organizations to recruit new members. The release of the photos will likely incite Muslim idealists to join the cause to seek retribution for the dishonor they may perceive to have been brought against all Muslims by the U.S. inside Iraq, the publicity over the images could incite additional attacks on U.S. personnel by members of the Iraq Security Forces ("green-on-blue" attacks); whether individually motivated, or instigated by an ex-

tremist affiliation. Groups most likely to use this as an opportunity to recruit and engage in attacks against US Forces are Sunni foreign fighters and Sunni extremists. Groups more likely to use this as an opportunity to draw attention to Iraqi jurisdiction and the relationship between Iraq and the United States are Shia extremists.

17. (U) MNF-I will likely experience an increase in attacks against U.S. Forces and bases as the photos incite retaliation by the Iraqi public. Iraqi Security Forces and the Government of Iraq (GoI) may experience a similar increase in attacks as a protest against the U.S./GoI partnerships. Less violent, but still posing a challenge for the U.S., may be an increase in the number of unspecified allegations of recent mistreatment in order to contradict our statements that the photos do not represent our policies, practices, or values. These claims could be exacerbated by calls for criminal prosecutions in Iraqi courts over U.S. servicemembers alleged to have engaged in mistreatment.

18. (U) The Iraqis, from their point of view, may feel largely excluded from the public discourse these images may generate in the U.S. and world stage. As was the case following Abu Ghraib, Iraqis may feel that the dignity of any Arab is of little consequence to the Americans when compared to their own interests. The official positions and talking points of the various stakeholders may do little to refute their certainty. The Iraqis likely will express this sentiment in a very public way utilizing media, political, and cultural mechanisms.

19. (U) During my conversations with senior Iraqi officials, they have expressed extreme concern about

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the impact of the potential release of photos depicting actual or perceived abuse of detainees ("abuse photos"). Among their concerns were that release of such photos would increase the pressure to release individuals that U.S. forces are currently holding as security detainees. These individuals currently are being released in a safe and orderly fashion, and accelerating the process could disrupt the delicate security balance in Iraq. They also stated that those in violent opposition to the political process would likely use abuse photos to maximize support, increase funding, and stiffen the resistance. They believe that releasing such photos will result in an outbreak of violence directed at U.S. forces and facilities. Furthermore, they are concerned that releasing abuse photos will severely impact reconciliation as former opposition elements meet resistance to reconciling with a Government that has aligned itself with the country that committed this abuse.

20. ~~(S)~~ [REDACTED]

21. ~~(S)~~ [REDACTED]

22. ~~(S)~~ [REDACTED]

23. (U) A senior member of a prominent Sunni political group and a member of the Council of Representatives (the COR is the parliament) told a senior MNF-I leader that insurgents and terrorist groups will exploit the release of abuse photos to steadily increase attacks against U.S. Forces and Iraqis working with U.S. Forces. This COR member was consulted for a Sunni perspective, and he wished to emphasize that release of abuse photos would cause disturbances in Iraq: "With all due respect to freedom of information in the United

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States," for Iraq's sake he urged that they not be released at this time. "A release would disturb plans for [democratic] progress in the country because the Iraqi people would react poorly. In light of upcoming national elections, Iraqi politicians would exploit the situation to attract votes, further stirring things up."

24 ~~(S)~~ [REDACTED]

25. (U) A senior Shi'a member of the COR in a recent discussion with a senior MNF-I leader also raised concerns that the release of abuse photos would disrupt Iraq's democratic process, its security environment, and U.S.-Iraq relations. He stated that this is the worst possible time to release abuse photos as it is just prior to the beginning of the second Iraqi national election season. The release, he explained, would only serve to embarrass the Maliki government. The release would also expose the Maliki government to criticism from political opponents like militant Sunni nationalists or the Sadrists who would want to use any tool available to embarrass the current government. Furthermore, the "oppositionists" could tie the abuse scandal to their support for the U.S./Iraq Security Agreement (SA). He added that the lack of support could impact the ability of the GoI to defend the implementation of provisions in the SA, including any requests for U.S. military support in security operations in cities, villages, and localities, and implementing legal provisions concerning U.S. troops accused of crimes while conducting operations. Moreover, he explained that release of abuse photos would only serve to increase calls for a referendum on the Security Agreement and would prejudice the Iraqi public against any agreement that would serve Iraq and U.S.

long term security interests. Release of abuse photos would serve insurgent or terrorist interests by providing them with a propaganda windfall that would help recruit and find support from the population since it would be inevitable that many in the Iraqi public would feel a desire to take revenge on those whom they see as occupiers who humiliated them. Finally, he stated release of abuse photos would, in his opinion, directly endanger U.S. troops and civilians attempting to support the GoI efforts to improve security and services to the population as well as put Iraqi civilians at risk.

26. (U) Reconciliation among the various groups in Iraq is one of the prime efforts with which we support and assist the GoI. Recently, a senior official within the Government of Iraq who addresses reconciliation issues stated that timing now is poor for Iraq. He observed that those who support the reconciliation process might treat the photo release with equanimity, while those who oppose the political process would seek to use it as an instrument to create difficulties in advancing the strategic relationship. Further, those who oppose the process through violent means would likely seek to use abuse photos to maximize their support, seek additional funding from regional paymasters, and use the anger generated as a "recruiting sergeant" to stiffen the resistance. He agreed this is a problematic issue that needs resolution, but now would not be a good time, and it would not assist the reconciliation process.

27. (U) Political competitors are likely to exploit abuse photos as a means to gain leverage or improve negotiating positions—this political maneuvering may be focused on MNF-I and our allies in the Government of

Iraq. Indeed, this could be a destabilizing event for the Prime Minister and his government. Moreover, any key leaders associated with our detention programs, such as judges or tribal leaders who participate in reconciliation efforts for released detainees, may distance themselves from the U.S. If publicly challenged, they could support a contrarian position against the U.S. Even if conditions do not rise to the level of green-on-blue attacks, units could experience increased tension from their Iraqi partner units, resulting in a reduction in the level of combined operations and training. This lack of partner unit cooperation would severely impact our ability to continue to operate under the Security Agreement, which requires agreement and coordination with the GoI.

28. (U) Iraq today is safer, but it is not without risk. The near future has several critical events that extremist groups may attempt to influence through violence. There are still attacks against coalition and Iraqi forces, and release of the photos would likely boost the recruiting and fund raising that enables those attacks. While not every attacker is as honest about his motivation as the murderers of Nicholas Berg, it is my belief, based on my years of experience and judgment, that release of the photos would reasonably be expected to destabilize the country and endanger American, Coalition, and Iraqi lives.

(U) I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

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Executed on 27 May 2009.

/s/ RAYMOND T. ODIERNO
RAYMOND T. ODIERNO
General, U.S. Army
Commanding General, MNF-I

APPENDIX L

1. The Freedom of Information Act, 5 U.S.C. 552, provides in pertinent part:

Public information; agency rules, opinions, orders, records, and proceedings

* * * * *

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwar-

ranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

* * * * *

2. The Freedom of Information Act, 5 U.S.C. 552 (1982), provided in pertinent part:

Public information; agency rules, opinions, orders, records, and proceedings

* * * * *

(b) This section does not apply to matters that are—

* * * * *

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

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